

TITLE 10. CALIFORNIA DEPARTMENT OF REAL ESTATE

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE REAL ESTATE COMMISSIONER

Jeff Davi, Real Estate Commissioner, proposes to adopt, amend and/or repeal the proposed regulations described below in Title 10, California Code of Regulations, after considering all comments, objections and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commissioner proposes to adopt, amend and/or repeal sections 2842 and 2848 in Title 10 of the California Code of Regulations (CCR).

PUBLIC COMMENTS

The Commissioner or his representative will hold a public hearing starting at 10:00 AM, on June 29, 2007, in the Zinfandel Room at the Hilton Sacramento Arden West, located at 2200 Harvard Street, Sacramento, California 95815. The Examination Room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony to the Commissioner.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner. The written comment period closes on June 29, 2007. All written comments must be received by 5:00 p.m. on that date at the Department's Sacramento Office as follows:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

Comments may be sent via electronic mail to regulations@dre.ca.gov or via fax to David B. Seals at (916) 227-9458.

AUTHORITY AND REFERENCE

The changes to the regulations are authorized by Business and Professions Code sections 10080 and 10232.1 to implement, interpret or make specific Business and Professions Code sections 10232.1, 10235, 10236.4, 10240, 10240.2 and 10241.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

SUMMARY OF EXISTING LAWS AND REGULATIONS

Sections 10236.4, 10240, 10240.2, and 10241 of the Business and Professions Code set forth the statutory scheme regarding disclosures required to be given by real estate brokers to their clients for whom they are negotiating a loan to be secured directly or collaterally by a lien on real property. Section 2840 of the Regulations was originally adopted and subsequently amended to provide forms that would meet the requirements of Sections 10236.4, 10240, 10240.2, and 10241 to assist real estate brokers in presenting the required information in a format that was easy to follow and understand by the prospective borrower. Conditions in the homebuying market in California have changed rapidly. Property values and conventional loan rates have resulted in a reduction in the number of persons qualified to purchase a home. This, in turn, has spawned a variety of "nontraditional mortgage products" offered to borrowers with terms and conditions which have allowed more potential borrowers to "qualify" for loans but without giving the borrowers sufficient information about the repayment structure to make an informed decision regarding their ability to meet the payment obligations as the loan matures. On January 31, 2007, the California Senate Banking Committee held a hearing on nontraditional mortgage products and the application to State mortgage regulators of the Interagency Guidance on Nontraditional Mortgage Products Risks (Guidance). The Federal Guidance was jointly promulgated by the Office of the Comptroller of the Currency (Treasury Department), Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision (Treasury Department), and the National Credit Union Administration, to provide instruction to federally regulated entities on how to address the inherent risks to industry and consumers associated with the origination and funding of nontraditional mortgage products. The Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators promulgated a similar Guidance requesting that State regulators of mortgage lenders and brokers adopt the Guidance to maximize consumer protections when using high risk loan products. Primarily because of the increased number of loan defaults related to nontraditional mortgage products and the public attention attributable to them, the Senate Banking Committee at the January 31 hearing asked the Department which areas of the Guidance were applicable to the Department's licensed mortgage brokers and whether the Department had the enforcement authority to enforce the applicable portions of the Guidance. The Committee was advised that the Consumer Protection portion of the Guidance is applicable to mortgage brokers and existing law would allow for enforcement; however, clarifying regulations would be needed to instruct licensees how to comply. The changes proposed in Regulation Section 2842 are designed to accomplish that goal by implementing, interpreting and/or making specific the applicable laws and regulations cited hereinabove.

Sections 10232.1 and 10235 of the Business and Professions Code provide the statutory basis for the Department's obligation to assure that the advertising of real estate brokers who solicit borrowers or lenders for or negotiate loans or collect payments or perform services for borrowers

or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, are not doing so in a false, misleading or deceptive manner. Regulation Section 2848, Title 10, California Code of Regulations, was promulgated in 1965 to implement, interpret, and make specific the provisions of Sections 10232.1 and 10235. As a result of the changing conditions of the real estate market, the need to protect consumers, and the concerns raised at the January 31, 2007 Senate hearing, the Department is proposing to amend Section 2848 of the regulations to require additional disclosures in advertising by licensees regarding various “higher risk” loan products to assure that the advertising is not misleading or deceptive. The changes proposed in Regulation Section 2848 are intended to implement, interpret or make specific Sections 10232.1 and 10235 of the Business and Professions Code.

SUMMARY OF THE EFFECT OF THE PROPOSED ACTION

ADOPTION OF SECTION 2842

Would specify a disclosure form to be given to borrowers who are obtaining a “nontraditional mortgage product”, as defined, which requires details regarding the possible changes in interest rates, the impact on payments of changes in interest rates, the amount of negative amortization and the impact of negative amortization on monthly payments, etc..

AMENDMENT OF SECTION 2848

Would add two subsections to require additional disclosures, such as (1) the impact of negative amortization on monthly payments; (2) how often and how much interest rates and payments can change; and (3) whether there is a balloon payment, in the advertising of various “higher risk” loan products to assure that potential borrowers are not deceived.

EFFECT ON SMALL BUSINESS

The proposed regulatory changes will not substantially adversely affect small business because the changes will require more detailed disclosures but will thereby allow licensees to avoid facing disciplinary action and litigation by assisting them in complying with existing statutory law.

DISCLOSURES REGARDING THE PROPOSED ACTION

1. Plain English drafting: The Commissioner has confirmed that these regulations have been drafted in plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).
2. Mandate on local agencies and school districts: None.
3. Cost or savings to any state agency: None.
4. Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None.

5. Other non-discretionary cost or savings imposed upon local agencies: None.
6. Cost or savings in federal funding to the state: None.
7. The Department is not aware of any substantial cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The additional cost to the average mortgage loan brokerage is estimated to be approximately \$350 per year.
8. The Commissioner has made an initial determination that the adoption, amendment or repeal of these regulations will not have a significant state-wide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
9. Impact on jobs and business expansion, elimination or creation: The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs within the State of California nor will it significantly affect the creation of new businesses, the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.
10. Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commissioner must determine that no reasonable alternative he considered or that has otherwise been identified and brought to his attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commissioner invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed action may be directed to:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

The backup contact person is:

James L. Beaver, Assistant Chief Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

The name of the person who can respond to questions concerning the substance of the proposed regulatory action is:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

Please direct requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND INTERNET SITE

The Commissioner will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at his office, at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. The final statement of reasons once it is prepared pursuant to Section 11346.9 of the Government Code will also be a part of the rulemaking file and available for inspection and copying as indicated above. Portions of the rulemaking file and information regarding the Department are available through our website (www.dre.ca.gov). The express terms of the proposed action written in plain English are available

from the agency contact person named in this notice. Copies may be obtained by contacting David B. Seals at the address and phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Real Estate Commissioner may, on his own motion or at the recommendation of any interested person made by written or oral comment, modify the Proposed Regulation and adopt the Regulation Change as modified if the change is determined to be one that the public could have reasonably anticipated from this Notice, the Informative Digest, and the Initial Statement of Reasons.

If the Commissioner decides to modify the Proposed Regulation change, the Department will make copies of the full text of the regulation, as originally proposed with the proposed modifications clearly indicated, available for not less than 15 days prior to adopting the modified regulation. Copies of the modified regulation will be mailed to all persons who have made written or oral comments concerning the Proposed Regulation and all persons who have requested notification of availability of the modifications.

Requests for modified regulations or other communications concerning the Proposed Regulation change should be addressed to the Department's contact person, David B. Seals, at the address and/or telephone number above.

COMPLIANCE WITH GOVERNMENT CODE §11346.4(A)(1) THROUGH (4)

The Department of Real Estate (the Department) has complied with Government Code §11346.4(a)(1) through (4) and Section 86, Title 10 of the California Code of Regulations, by mailing or delivering a copy of this Notice of Proposed Changes in the Regulations of the Real Estate Commissioner and of the Proposed Regulations with changes indicated in strikeout and underline to the Department's list of interested persons including:

1. Every person who has filed a Request for Notice of Regulatory Action with the Department.
2. The Director of the Department. (The Real Estate Commissioner and the Secretary of the Business, Transportation and Housing Agency).
3. A substantial number of real estate brokers. They are predominantly small businesses, some of which may be, or have been in the past, affected by our Proposed Regulation change. The Department has no way of knowing which are small businesses.
4. The California Association of Realtors, a real estate licensee trade organization and the California Building Industry Association, a homebuilders trade organization.
5. A substantial number of land developers. Not small businesses by definition, but some of which may be, or have been in the past, affected by our Proposed Regulations.

DATED: _____

Jeff Davi
Real Estate Commissioner